



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0268]

Hours of Service of Drivers: Trailways Companies Application for Exemption Renewal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant Adirondack Trailways, Pine Hill Trailways, New York Trailways (“Trailways”) and all other regular-route passenger carriers and their drivers a renewal of their exemption from the hours-of-service (HOS) record of duty status (RODS) requirement to enter a change in duty status on the daily log for breaks in driving time of 10 minutes or less, for the limited purpose of picking up or dropping off passengers, baggage, or small express packages. FMCSA extended the exemption to all regular-route passenger carriers and their drivers rather than limiting it to Trailways’ drivers. The renewal of the exemption will allow these drivers to perform their daily duties without having to record entries in the daily log for breaks in driving time of 10 minutes or less. Such activity will not be considered a change of duty status for the purposes of 49 CFR 395.8(c).

DATES: This exemption is effective from May 31, 2015 through May 31, 2017.

FOR FURTHER INFORMATION CONTACT: Mrs. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety

Standards; Telephone: 202-366-4325, Email: MCPSD@dot.gov, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

Docket: For access to the docket to read background documents or comments submitted to the notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Trailways Application for Exemption

The HOS rule in 49 CFR 395.8 requires every commercial motor vehicle (CMV) driver to record his or her duty status for each 24-hour period using methods described in that section. Section 395.8 (c) describes the manner in which each change of duty status must be recorded. Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the HOS requirements for up to 2 years if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381.

Trailways' initial application for relief from the HOS RODs rule was submitted in 2012; a copy of the application is in the docket identified at the beginning of this notice. The 2012 application describes fully the nature of Trailways' operations. On May 31, 2013, FMCSA granted the exemption to Trailways and all other regular route passenger

carriers and their drivers for the period from May 31, 2013, through May 31, 2015 (78 FR 32701).

Trailways' application for a renewal of the exemption is for fixed-route carriers and their drivers who are often away from the controls of the vehicle for less than 10 minutes to assist passengers or make passenger pick-ups and drop-offs along the route. Trailways' advised that, until March 2011, they and other motor carriers had been operating in accordance with a 1996 interpretation of 49 CFR 395.8(c) issued by the Federal Highway Administration (FHWA). The 1996 interpretation allowed regular-route passenger carrier CMV drivers not to record a location entry on the driver's RODS for non-driving periods of less than 10 minutes. The RODS simply showed the stop as driving time. In March 2011, New York State officials began enforcing the rule literally, requiring that a change in duty status be entered on the log any time the driver leaves the operating controls of the CMV. Trailways was concerned that the violations would have a negative effect on the companies' and the drivers' Compliance Safety Accountability ratings, as well as schedules and passenger service because of the delays needed to make the entries.

Trailways requested that their drivers with regularly scheduled routes be exempted from changing their duty status from "driving" to "on-duty not driving" when making stops of less than 10 minutes.

Trailways noted that the exemption would reduce the amount of total time a driver can drive in a duty period. Without the exemption, the times drivers spend at stops to load passengers, freight, etc. would be logged as on-duty/not driving, increasing the driving time available, but creating an additional administrative distraction every

time the driver leaves the controls, regardless of the reason or the limited amount of time away from the vehicle controls. Trailways further advised that its carriers provide flag stops and that having to update the log at each flag stop increases the length of time the motorcoach may delay traffic while waiting for the pick-up and/or discharge of passengers and luggage, and then waiting for the driver to update the log. According to Trailways, in many instances the large number of brief stops will not fit on the log if the driver makes all of the required entries.

Trailways noted that the maximum possible driving time would be reduced and that traffic congestion could be reduced. FMCSA believes this will ensure that operations under the exemption will be at least as safe as operations that comply with the requirements on change of duty status.

As in 2013, FMCSA extends the renewed exemption to all regular-route for-hire passenger-carrier drivers because they presumably operate in much the same manner as Trailways. Including all such drivers in the exemption will preclude the need for other carriers to file identical exemption requests, and will provide for consistent enforcement because the same provisions would be applied to all similar scenarios involving brief stops by drivers of these carriers during their regular-route operations. Copies of Trailways' original and renewal applications are available for review in the docket for this notice.

Public Comments

On March 18, 2015, FMCSA published notice of this application, and asked for public comment (80 FR 14229). Only one comment was submitted, and it supported the

renewal of the exemption. The comment is available for review in the docket for this notice.

FMCSA Decision

The FMCSA has evaluated Trailways' application for renewal of the exemption and the public comment. The Agency believes that Trailways will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)). During the 2-year period of the current exemption, only one accident was reported while operating under the exemption, and the motorcoach driver was determined to not be at fault.

Terms of the Exemption

Period of the Exemption

The exemption from the HOS record of duty status requirements of 49 CFR 395.8(c) is granted for the period from 12:01 a.m. on May 31, 2015 through 11:59 p.m. on May 31, 2017.

Extent of the Exemption

The exemption is restricted to drivers employed by Trailways and other regular-route for-hire passenger carriers. Instead of complying with the provisions in 49 CFR 395.8(c), these drivers are exempted from changing their duty status from "driving" to "on-duty not driving" when making stops of less than 10 minutes. These drivers must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399).

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Notification to FMCSA

Trailways and other regular-route for-hire passenger-carriers utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

- a. Name of operating motor carrier and USDOT number,
- b. Date of the accident,
- c. City or town, and State, in which the accident occurred, or closest to the accident scene,
- d. Driver's name and license number and State of issuance,
- e. Vehicle number and State license plate number,
- f. Number of individuals suffering physical injury,
- g. Number of fatalities,
- h. The police-reported cause of the accident,
- i. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- j. The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be e-mailed to MCPSD@DOT.GOV.

Termination

FMCSA does not believe the carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: May 27, 2015.

T. F. Scott Darling, III,
Chief Counsel.

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